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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,976	06/27/2005	Dominique Guinot	0510-1115	9232
466 7590 04/25/2007 YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER MARCANTONI, PAUL D	
			ART UNIT	PAPER NUMBER
			1755	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/25/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/540,976

Applicant(s)

GUINOT ET AL.

Examiner

Paul Marcantoni

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Applicants' election without traverse of Group I, claims 1-12 and 18-20 is respectfully acknowledged.

35 USC 102/103:

Claims 1-12 and 18-20 are anticipated under the first paragraph of 35 USC 102 (a and b), or in the alternative, as unpatentable under 35 USC 103(a) over Gaudry et al. '527 B2, Nakagawa et al. '561 or '978, Harada et al. '425, Kellet et al. '167, Mathieu '220, Dubey '658 B1, EP 0769482 A1 (Mizushima et al.), Aiko (JP 02145469 abstract), or JP 05009049 (Watanabe et al.).

All of the above cited references teach a setting accelerator composition that can be used for cements such as Portland cement comprising calcium aluminate, a setting inhibitor or retarder, and the inclusion of an anti-settling agent thus anticipating the applicants' claims. Even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art. Also, the applicants claimed anti-settling agent can read upon substances that are not necessarily those for their instant invention such as the common additive to cement, sand. Applicants can overcome this issue with respect to anti-settling agent in all independent claims (such as claim 1) by inserting the limitations of claim 9 into their independent claims. It is hoped and expected that in the next response and amendment of claims most if not all of the references used in the rejection above will be withdrawn. It is also noted that the applicants' addition of a dispersing agent such as a superplasticizer, even if not within the teaching of all cited references above, is a common and conventional additive to cement and its addition would have been an obvious design choice for one of ordinary skill in the art.

Gaudry et al. '527 B2 teach a composition comprising Portland cement, calcium aluminate, citric acid retarder (retarder is synonymous with inhibitor or set controlling agent),

water reducer (which is a superplasticizer), etc. Even if not anticipated, the use of sand can read upon applicants' anti-settling agent. Applicants again should consider insertion of the limitations of claim 9 into the independent claims such as claim 1. This may potentially lead to withdrawal of the reference if it is unobvious to add the applicants' specific anti-settling agents of claim 9 into this prior art composition.

Nakagawa et al. '561 or '978 teach a composition for accelerating cements such as Portland cement comprising calcium aluminate, citric acid (col.2, line 33), water reducing agent (meets limitation of dispersing agent-see col.2, line 65), and sand (example 2 in col.5) which is an conventional additive that can be an anti-settling agent.

Harada et al. '425 teach an accelerating mixture comprising calcium aluminate, citric/boric acid (set control agent-thus inhibits or retards setting of cement), bentonite clay (col.4 lines 26-27-which is thus an anti-settling agent-see applicants' claim 9), etc. The fact that Harada et al. '425 may teach an emulsion with other additives is not a patentable distinction over applicants' claimed invention because applicants use comprising claim language which opens their claim to the inclusion of unspecified ingredients even in major amounts.

Kellet et al. '167 teach an accelerating composition for Portland cement comprising calcium aluminate, bentonite clay (claim 19 in col.6), and citric acid or borate (claims 24-25 in col.8) thus anticipating applicants' claims. Even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art.

Mathieu '220 teach a composition comprising calcium aluminate, citrate, and a pozzolan (col.3, line 20) which can potentially be a clay such as a metakaolin clay and thus meet applicants' anti-settling agent.

Dubey '658 B1 teach a composition comprising high alumina cement (a calcium aluminate), retarder or inhibitor such as citric acid, superplastizer, and clay (see claim 6-thus meets anti-settling agent) anticipating applicants' claims. Even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art.

EP 0769492 (Mizushima et al.) teach a composition comprising calcium aluminate, citric acid retarder (p.6, line 50), and bentonite or kaolin clay (p.7, line 17) thus anticipating applicants' claims. Even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art.

Aiko et al. (JP '469) teach a rapid set accelerating composition comprising calcium aluminate and citric acid. The use of sand as a filler for cements and grouts is old in the art and this would meet the limitation of anti-settling agent. However, should applicants insert the limitations of claim 9 into the independent claims (e.g. claim 1) this reference would be withdrawn.

Watanabe et al. (JP '049) teach a composition comprising calcium aluminate, bentonite, and boric acid thus anticipating applicants claims. Even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art.

35 USC 112 Second Paragraph:

Claims 1-12 and 18-20 are rejected under the second paragraph of 35 USC 112 second paragraph as failing to particularly point out and distinctly claim applicants' invention.

The terms "preferably" used throughout the claims is indefinite and should be deleted.

The terms "selected among" should be amended to —selected from the group consisting of— which is more known and conventional US PTO claim language format for Markusch

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groups in claims 9, 10, 12, 20, or any other claim it is used.

Finally, applicants may consider amending the British spelling of "colour" which is still acceptable to the American English spelling common in this country of —color— in claim 11.

Any inquiries may be directed to Paul Marcantoni at 571-272-1373.



PAUL MARCANTONI  
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GROUP 1700